

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

ITV DIRECT, INC.,

Plaintiff,

v.

HEALTHY SOLUTIONS, LLC, et al.,

Defendants.

CIVIL ACTION NO. 04-CV-10421-JLT

RELATED CASES

**AFFIDAVIT OF DONALD BARRETT**

I, DONALD BARRETT, under oath, declare as follows:

1. I am a principal shareholder of defendant ITV Direct, Inc. ("ITV Direct"), and am responsible for the management and operations of ITV Direct. I make this declaration on the basis of my own personal knowledge of the facts set forth herein and could testify competently thereto if called to do so.

2. I am the primary person responsible for identifying business opportunities for ITV Direct. This responsibility includes meeting with numerous individuals who believe that they have products that will experience enhanced distribution and sales through infomercial marketing. Before agreeing to commit to an infomercial for a particular product, it is important to meet with the representatives of the company manufacturing and selling the product, and to ascertain the credibility of the spokesperson concerning the merits of the product that he or she is seeking to sell through direct marketing.

3. In late 2002, Gregory Geremesz contacted representatives of ITV Direct and stated that he knew a Dr. Alejandro Guerrero, who had developed a greens product that Mr. Geremesz believed would likely be successful if marketed through an infomercial. ITV Direct reviewed the materials provided by Geremesz and Guerrero, including testimonials by fitness celebrity Tony Robbins, and decided to pursue additional discussions. At all times, Geremesz

and Guerrero represented that Guerrero was a doctor and OMD, and operated a clinic in California with regular patients. Geremesz and Guerrero also represented that the greens product developed by Guerrero had been clinically tested on patients in California and had shown tremendous results. At all times Geremesz and Guerrero represented that they were officers and representatives of Healthy Solutions, LLC, a California limited liability corporation, with full authority to act for Healthy Solutions in connection with the greens product.

4. On April 4, 2003, ITV Direct entered into an exclusive "Distribution Agreement" with Healthy Solutions for the manufacture and distribution of a product known as "Supreme Greens with MSM". The Distribution Agreement provided that ITV Direct would produce an infomercial featuring Guerrero and that ITV Direct would be the exclusive distributor of the product in connection with the infomercial.

5. On April 11, 2003, Guerrero traveled to ITV Direct's studios in Beverly, Massachusetts to film the infomercial. Prior to filming, Guerrero once again identified himself as a doctor, and stated that he had received his doctorate in Traditional Chinese Medicine in California. As is standard practice, the infomercial filming was unscripted and ITV Direct, Inc. did not dictate any of the statements by Guerrero, including his statements regarding his credentials, his clinical practice in California or the scientific support for the Supreme Greens with MSM product.

6. Consistent with his prior representations to me and representatives of ITV Direct, in the infomercial Guerrero states that he is a doctor and operates a clinic in California. He states that he has cancer patients, AIDS patients, and patients with MS, diabetes and Parkinson's disease. He states that through his clinic he conducted a study of over 200 patients, all of whom were diagnosed as terminally ill, and that all but eight of these patients are still alive. In addition, Guerrero represented that he received a doctorate degree in Traditional Chinese Medicine from the SAMRA University. Guerrero also confirmed to me that he possessed documentary and clinical support for each and every one of these representations.

7. In order to promote the sale of Supreme Greens, ITV Direct expended millions of dollars on advertising for the product, including media time and promotional literature. In the infomercial industry, much of the expense of promotion is “up front”, meaning that profits are only recouped if the infomercial runs successfully for a certain length of time. If for any reason the infomercial run or sales cycle is cut short, then ITV Direct stands to lose millions of dollars in pre-paid expenses for the media.

8. Because Guerrero is solely responsible for supporting the health claims made in the infomercial about his greens product, Healthy Solutions agreed to indemnify and hold harmless ITV Direct and its officers, directors, employees, shareholders and affiliates from any and all claims, lawsuits, actions and proceedings in court or by any governmental unit, relating to the manufacture and content of Supreme Greens with MSM, and health claims made by Guerrero concerning the claimed impact the product would have on the health of users of the product.

9. Within the last several weeks, ITV Direct has been contacted by both the United States Food and Drug Administration and the Federal Trade Commission concerning the health claims that Guerrero has made in connection with the Supreme Greens with MSM product, both in the product labeling and packaging provided by Guerrero and Healthy Solutions and in the infomercials. Each agency has indicated that they do not believe Healthy Solutions or Guerrero can provide competent and reliable scientific evidence to support the claims made by Guerrero in connection with Supreme Greens with MSM. The remedies that each agency could seek against ITV in connection with these investigations could shut down the business and put hundreds of employees out of work. The potential losses to ITV in connection with these investigations are many times in excess of the amounts claimed by Guerrero.

10. In addition, in connection with the FDA and FTC investigations, ITV Direct has investigated the background of Guerrero, who has represented to me, my employees, his own employees, the public and the Court that he is a doctor and an OMD. Neither claim appears to be true. Rather, it appears that Guerrero received only a Masters Degree from SAMRA University in Los Angeles, and has never received a doctorate of any kind at any time. Although

Guerrero claims in his May 13, 2004 Declaration that he has never misrepresented his true credentials, he told me directly during filming of the infomercial that he had received his doctorate. He also told my associate Mr. Maihos and several of my employees on several occasions that he was an OMD. He also has signed documents as both a doctor and OMD. These statements were untrue.

11. I have reviewed Guerrero's May 13, 2004 Declaration. Contrary to Guerrero's testimony, each and every statement that he made in the infomercial was his own statement, unscripted by ITV Direct, including his alleged credentials, scientific studies and patients at his California clinic. His contention that his statements could somehow be "edited" to falsely portray what he actually said is absurd. ITV Direct still possesses the raw unedited footage of the infomercial, which I have reviewed. That footage demonstrates that Guerrero voluntarily made each and every statement now under scrutiny by the FTC and the FDA, and identified by ITV Direct in its prior submissions to the Court. Guerrero's statement that he protested some of the content in the infomercial is false. Guerrero was provided a copy of the edited tape, reviewed the tape thoroughly and approved each and every statement he voluntarily made. In fact, Guerrero complemented the edited version of the show. Mr. Geremesz also reviewed the tape and never protested any of the content.

12. I believe that Guerrero lied to me and defrauded ITV Direct in connection with his true background, in clear breach of the representations and warranties in the Distribution Agreement. In addition, numerous representations made to the Court and in the documents attached to the defendants' counterclaims, including the sworn declaration of Geremesz, refer to Guerrero as a doctor and OMD, and refer to his medical practice. These representations appear to be false. Based on these false statements, ITV Direct expended millions of dollars on media and promotion for Supreme Greens with MSM. It is unlikely that ITV Direct will ever recover these amounts. ITV has also been forced to lay off fifty employees because it was required to pull the infomercial when it discovered Guerrero's fraud. In addition, the pending FTC and FDA investigations could put ITV Direct and its remaining hundreds of employees out of business.

13. I understand from a review of the Healthy Solutions' reply that it is continuing to claim that ITV has produced, or is well into the process of producing, a nutritional supplement bearing the mark "Supreme Greens" that was manufactured by an entity other than Healthy Solutions. That is untrue. ITV has never manufactured, bottled or sold any product under the label "Supreme Greens with MSM" that was not manufactured and delivered by Healthy Solutions or one of its subcontractors. I am aware of no "fake," "phony," or "counterfeit" products whatsoever currently in the marketplace, and ITV has neither produced nor sold any such product.

14. In addition, ITV has not produced any labels bearing the name "Supreme Greens with MSM," and does not intend to produce labels bearing the name "Supreme Greens with MSM" pending resolution of the issue of the ownership of that trademark.

15. ITV Direct has not purchased any media time for the Supreme Greens with MSM product in well over a month, consistent with the prior affidavit of my associate Robert Maihos. Although the Defendants assume that ITV Direct is purchasing media because a few airings of the infomercial occurred in late April 2004, that assumption is incorrect. Rather, those isolated airings are the result of previously purchased media that ITV Direct was either unable to cancel or was technically unable to replace with substitute programming. ITV Direct has not purchased any media in the last month and has no intention to purchase any additional media for Supreme Greens with MSM in the future.

16. ITV Direct is not insolvent. The only threat to ITV Direct's assets is in connection with the FTC and FDA investigations, which were brought on entirely by Guerrero's false statements and fraud. As to these investigations, Healthy Solutions agreed to completely indemnify ITV Direct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 19<sup>th</sup> day of May, 2004 at Beverly, Massachusetts.

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/s/Donald Barrett  
DONALD BARRETT